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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/70/2025
PRINCIPAL COMMISSIONER OF INCOME TAX 1, KOLKATA
VS
M/S BRITANNIA INDUSTRIES LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 7th August, 2025.

Appearance :
Mr. Amit Sharma, Adv. …for appellant.

Mr. Pratyush Jhunjhunwalla, Adv.
Ms. Sruti Datta, Adv.
Ms. Sakshi Singhi, Adv. …for respondent.

The Court :- Matter has been listed under the caption 'To Be Mentioned'.

It is pointed out by the learned advocate appearing for the respondent/assessee that there are several typographical mistakes crept in the order dated 9th July, 2025 which needs to be corrected. Since the corrections are made in several paragraphs and in several places, the order dated 9th July, 2025 is replaced by the following order with corrections incorporated.

"This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated March 6, 2024 passed by the Income Tax Appellate Tribunal, A - Bench, Kolkata (the Tribunal) in ITA/462/Kol/2023 for the assessment year 2018-19.

The revenue has raised the following substantial questions of law for consideration :

"(i) Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in law to quash the order under Section 263 of the Income Tax Act, 1961 when it is apparent from the records that the assessment order is erroneous and prejudicial to the interest of

2025:CHC-OS:115-DB

the Revenue inasmuch as the same has been passed by the assessing officer without making due and proper enquiry and without verification of the issues raised by the PCIT-1, Kolkata?

ii) Whether on the facts and in the circumstances of case, the Learned Tribunal was justified in law to quash the order passed under section 263 of the Income Tax Act, 1961 by holding that the jurisdiction has been invoked by the PCIT-1, Kolkata at the instance of the Assessing Officer, when it is clearly discernable form the records that the PCIT-1, Kolkata has passed the order after calling for and examining the assessment record of the assessee?

iii) Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in law to decide the issue relating to application of Section 56(2)(x) of the said Act on acquisition of leasehold property by, not considering that Section 56(2)(x) of the Act (introduced in Finance Act, 2017) was applicable from A.Y. 2018-19 wherein it has been specifically stated that any immovable property acquired by an assessee shall be chargeable to tax under the head "Income from Other Sources" where Stamp Duty value exceeds Rs.50,000/ to the value of consideration, and as such provisions of Section 56(2)(x) of the Act is clearly applicable in the instant case as there is a difference of Rs.89,30,47,350/- in value of acquisition and stamp duty value?

iv) Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in law to decide the issue relating to excess claim of deduction under Section 43B of the Act by reversal entry inasmuch as under Section 43B of the Act it has been specifically stated that certain deductions are allowable only on actual payment and whereas the assessee has disclosed in Form 3CA with its return of income that an amount of Rs.10,80,71,268/ was actually paid towards sales tax and other taxes creating a provision of disallowance to the tune of Rs. 14,47,32,736/ under Section 43B of the Income Tax Act, 1961?

We have heard Mr. Amit Sharma, learned standing counsel appearing for the appellant/revenue and Mr. J.P. Khaitan, learned senior advocate appearing for the respondent/assessee.

The assessment for the year under consideration, AY 2018-19, was a scrutiny assessment under the E-assessment Scheme 2019 on various issues and an assessment order dated 22.3.2021

was drawn. The Principal Commissioner of Income Tax, Kolkata – 1, [PCIT] invoked his power under Section 263 of the Act and issued show cause notice dated 30.11.2022 calling upon the assessee to show cause as to why assessment order under Section 143(3) of the Act dated 22.03.2021 should not held as erroneous in so far as it is prejudicial to the interest of the revenue. Totally there were five issues which were raised in the show cause notice of which we are concerned only with two issues in this appeal, namely, no.(i) applicability of Section 56(2)(x) on the acquisition of leasehold land and building and freehold land and (ii) disallowance of claim under Section 43B in relation to reversal or write back of provision for liabilities. The assessee submitted their replies dated 13.1.2023, 13.2.2023 and 13.3.2023 after which the PCIT passed an order under Section 263 dated 29.3.2023 setting aside the assessment order passed under Section 143(3) of the Act and directed the assessing officer to pass a fresh assessment order after considering the issues which were discussed in his order dated 29.3.2023. Challenging the said order, the assessee preferred appeal before the learned Tribunal which was allowed by the impugned order and the revenue being aggrieved has preferred the present appeal.

The first aspect to be considered is whether the power under Section 263 of the Act could have been invoked. A reading of section 263 of the Act would clearly show that unless and until the twin conditions are satisfied that the assessment order should be erroneous and it should be prejudicial to the interest of revenue, the power under Section 263 of the Act cannot be invoked. Apart from that, the statute mandates that the PCIT should inquire and be satisfied that the case warrants exercise of its jurisdiction under Section 263 of the Act and such satisfaction should be manifest in the show-cause notice which is issued under the said provision. The Tribunal considered the factual position and found that out of the five issues which were raised in the show-cause notice issued under Section 263 of the Act, except for two issues the explanation offered by the assessee in respect of the other issues were accepted by the

PCIT. Furthermore, on facts it is clear that the PCIT invoked its jurisdiction under Section 263 of the Act at the instance of the Assessing Officer, which was incorrect. In this regard, there are several decisions, some of which have also been referred to by the learned Tribunal and as the legal position is well settled, we refrain from referring such decisions. Therefore, the finding of the learned Tribunal that the PCIT could not have invoked its power under Section 263 of the Act solely based upon the reference made by the Assessing Officer is well founded.

With regard to the valuation of the property and whether section 56(2)(x) of the Act would apply, we are required to examine the facts. The assessee acquired leasehold land and building from Bombay Dyeing and Manufacturing Company Limited, a listed Company pursuant to an agreement for sale dated 31.12.2016 since approval was required from the Maharashtra Industrial Development Corporation, the deed of assignment was registered on 27.3.2018, that is, during the assessment year under consideration. The leasehold land and building situated at Ranjangaon, Maharashtra so acquired for an aggregate consideration of Rs.168,85,00,000/- which consideration was calculated on the basis of valuation report from the registered Valuer, who had valued the land based on the Direct Comparison Method and the building based on Depreciated Replacement Cost Method. The leasehold land was registered with the local authority, who valued the leasehold land and building at Rs.211,63,11,850/- [for leasehold interest in land] and Rs.147,57,26,950/- [for leasehold interest on building] aggregating to Rs.364,80,38,000/-. The freehold land was acquired for a consideration to Rs.13,56,79,600/- by an agreement to sell dated 6.9.2017 and the deed of conveyance was registered on 26.09.2017, where the value assessed by the Stamp Valuation Authority was Rs.30,00,33,000/- and according to the valuation report the fair market value of the property was Rs.12,75,00,000/-. The land and building was acquired for setting up of a mega industrial unit and the Government of Maharashtra had sanctioned several incentives which includes 100% reimbursement of capital investment made by the assessee company. Therefore, the

assessee had not gained in any manner whatsoever from valuing the property at a lower value than the value adopted by the Stamp Duty Authority. Further, it is seen that the property was valued on scientific basis after conducting due diligence by a registered valuer. That apart, the property was not fully developed and has uneven surfaces and the assessee had to spend substantial money to enable setting up of a mega industrial unit. It is not in dispute that all these facts were placed before the NFAC and they were also disclosed in the notes of the tax audit report and the notes to the computation of income filed along with the return of income and those were scrutinised by the Assessing Officer. In fact, the learned Tribunal has extracted the relevant portion of the notes filed by the assessee before the Assessing Officer. Therefore, it cannot be stated that the Assessing Officer did not take into account all the factors and had accepted the plea of the assessee and completed the assessment. Therefore, the PCIT to invoke its power under Section 263 of the Act has to apply its mind to the audit report and record its satisfaction that the twin conditions required to be complied with under Section 263 of the Act have not been satisfied. That apart, the Income Tax Act has a provision for disputing the stamp value being taken as the full value of consideration in certain cases in section 50C of the Act. The very existence of such a provision is a clear indication that the valuation adopted by the Stamp Authorities is not always sacrosanct and power has been given for reference to the valuation authority where the assessee would also be entitled to contest such valuation as the said authority is being treated as an expert on the said subject. Therefore, the Tribunal was fully justified in holding that the PCIT could not have invoked its power under Section 263 of the Act. Though in the show-cause notice it is alleged that these aspects were incorrectly considered by the Assessing Officer, curiously enough in the order passed under Section 263 of the Act dated 29.3.2023 the PCIT states that the Assessing Officer has not considered these aspects during the course of assessment; he has not made any inquiry on the issue nor did he issue any questionnaire in this regard and also held that the assessee in its reply dated 13.3.2023 did not

contradict these facts. This finding rendered by the PCIT in its order dated 29.3.2023 is factually incorrect and the outcome of total non application of mind. Therefore, the finding rendered by the learned Tribunal is fully justified. That apart, while submitting the reply to the show-cause notice the assessee has pointed out section 56(2)(x) of the Act would not apply as the property was acquired by the assessee pursuant to an agreement for sale dated 31.12.2016 and on the said date section 56(2)(x) was not in the statute book as it was inserted with effect from 1.4.2017. Hence, the order passed under Section 263 of the Act was thoroughly faulty.

On the second issue namely, with regard to disallowance of claim under Section 43B in relation to reversal or write back of provision for liability, the assessee in its reply dated 13.1.2023 to the show-cause notice issued under Section 263 of the Act after giving all the relevant facts contended that the reversal of a provision which was not allowed as an expense when created by virtue of section 43B of the Act, cannot now be brought to tax upon its reversal/write back and such an action would effectively amount to double addition of the said sum, which is wholly impermissible under law. Therefore, the PCIT was required to consider the explanation offered and take a decision in the matter. On the contrary, PCIT, while passing the order under Section 263 of the Act dated 29.3.2023, miserably failed to render any finding despite the fact that the assessee placed reliance on the decision in the case of PCIT vs. Eveready Industries India Limited, ITAT/96/2017 dated 29.11.2021 and, accordingly, set aside the order passed by the Assessing Officer with a direction to the Assessing Officer to examine whether the decision in the case of Eveready Industries India Ltd. would be applicable to the case of the assessee or not after giving due opportunity of being heard to the assessee. The manner in which the PCIT has dealt with this issue is wholly untenable and, therefore, the learned Tribunal was justified in setting aside the order passed by the PCIT on that score.

Thus, for all the above reasons, we are of the clear view that the learned Tribunal was right in allowing the assessee's appeal and setting aside the order passed by the PCIT. In the result, the appeal fails and the same is dismissed and the substantial questions of law are answered against the revenue.

Consequently, the application/GA/2/2025 also dismissed."

Let the corrected order shall be uploaded which will be in substitution of the order dated 9th July, 2025.

(T.S. SIVAGNANAM, CJ)

(CHAITALI CHATTERJEE (DAS), J.)

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